

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MONICA M. GRIEGO,
for H.M.G. and E.R.G.,

Plaintiff,

v.

No. 1:22-cv-00572-MV-KK

NEW MEXICO CHILDREN, YOUTH
AND FAMILIES DEPARTMENT, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

Plaintiff, who is proceeding *pro se*, filed two Standard Form 95s, one for H.M.G. and one for E.R.G. *See* Complaint at 1, 3, Doc. 1, filed August 1, 2022. Standard Form 95 is the form for filing an administrative claim for damage, injury or death, with a federal agency, before filing suit in federal court pursuant to the Federal Tort Claims Act.

Plaintiff did not pay the \$402.00 fee for instituting a civil action or file an “Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form)” (“Application”). United States Magistrate Judge Kirtan Khalsa ordered Plaintiff to either pay the \$402.00 fee or file an Application. *See* Order at 1, Doc. 3, filed August 2, 2022.

Judge Khalsa notified Plaintiff, who is asserting claims on behalf of H.M.G. and E.R.G. and does not appear to assert any claims on her own behalf, that:

Plaintiff is not a licensed attorney authorized to practice in this Court. The claims Plaintiff is asserting on behalf of H.M.G. and E.R.G. should be dismissed because “[a] litigant may bring his own claims to federal court without counsel, but not the claims of others.” *Fymbo v. State Farm Fire & Cas. Co.*, 213 F.3d 1320, 1321 (10th Cir. 2000); *see also Kanth v. Lubeck*, 123 F. App’x 921, 923 n.1 (10th Cir. 2005) (stating that “as a non-lawyer parent, appearing pro se, [plaintiff] may not represent his minor children in federal court”) (citing *Meeker v. Kercher*, 782 F.2d 153, 154 (10th Cir. 1986) (holding that “under Fed. R. Civ. P. 17(c) and 28 U.S.C.

§ 1654 [stating that parties may plead and conduct their own cases personally or by counsel], a minor child cannot bring suit through a parent acting as next friend if the parent is not represented by an attorney”)).

Order at 2. Judge Khalsa ordered Plaintiff to show cause why the Court should not dismiss the claims that Plaintiff is asserting on behalf of H.M.G. and E.R.G.

Judge Khalsa also notified Plaintiff that this case should be dismissed for lack of subject-matter jurisdiction and for failure to state a claim because (i) the Complaint does not allege facts supporting jurisdiction and (ii) the Complaint does not explain what each individual Defendant did to Plaintiff, and appears to assert claims against New Mexico Children, Youth and Families Department which, as an arm of the State of New Mexico, is immune from suits brought in federal court by its own citizens. *See Order at 2-4.* Judge Khalsa ordered Plaintiff to show cause why this case should not be dismissed for lack of jurisdiction and for failure to state a claim, and ordered Plaintiff to file an amended complaint. *See Order at 5.*

Judge Khalsa notified Plaintiff that failure to timely comply with her Order may result in dismissal of this case. Plaintiff did not comply with Judge Khalsa's Order by the August 23, 2022, deadline.

The Court dismisses this case without prejudice. Plaintiff did not pay the filing fee as required by 28 U.S.C. § 1914(a) and did not file an Application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a)(1), which would authorize the Court to commence this action without prepayment of fees. Plaintiff cannot bring claims on behalf of H.M.G. and E.R.G. because Plaintiff is not a licensed attorney authorized to practice in this Court. The Complaint does not allege facts supporting jurisdiction and does not state claims upon which relief can be granted, and Plaintiff has not filed an amended complaint or shown cause as to why this case should not be

dismissed. *See* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action”).

IT IS ORDERED that this case is **DISMISSED without prejudice.**



MARTHA YAZQUEZ
SENIOR UNITED STATES DISTRICT JUDGE